IN THE MATTER OF THE RATES AND CHARGES OF JERSEY CENTRAL POWER AND LIGHT COMPANY	STATE OF NEW JERSEY BOARD OF PUBLIC UTILITIES BPU Docket No. _________ PETITION

The State of New Jersey, Division of Rate Counsel ("Rate Counsel" or "Petitioner"), respectfully submits this petition to the State of New Jersey, Board of Public Utilities ("BPU" or "Board"), seeking an Order pursuant to N.J.S.A. 48:2-21(b)(1) directing Jersey Central Power and Light Company ("JCP&L" or the "Company") to file a base rate case petition so that the Board may determine whether the Company's current rates for electric service are just and reasonable. More specifically, in order to expedite the proceeding and provide the Board with actual data for review, Rate Counsel asks that the Board require JCP&L to file its petition using a 2010 historical test year. In support of its Petition, Rate Counsel states as follows:

I. JCP&L's Existing Rates for Electric Service Yield Earnings Far in Excess of a Reasonable Rate of Return and, therefore, are Unjust and Unreasonable.

As set forth herein, Rate Counsel has reason to believe that JCP&L is earning an unreasonable return on its jurisdictional rate base and, accordingly, the Board should initiate a base rate proceeding in order to determine whether the Company's current rates for service are just and reasonable. Clearly, the Board has the power to fix just and reasonable rates for utility service:

> The board may after hearing, upon notice, by order in writing:
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> 1. Fix just and reasonable individual rates, joint rates, tolls, charges or schedules thereof, as well as commutation, mileage and other special rates which shall be imposed, observed and followed thereafter by any public utility, whenever the board shall determine any existing rate, toll, charge or schedule thereof, commutation,

> mileage or other special rate to be unjust, unreasonable, insufficient or unjustly discriminatory or preferential. In every such proceeding the board shall complete and close the hearing within 6 months and enter its final order within 8 months after the filing of the order of the board initiating such proceeding, when such proceeding is on the board's own motion; or after issue is joined through the filing of an answer to a complaint, when such proceeding is initiated by complaint. N.J.S.A. 48:2-21(b)(1).

The ratemaking process is designed to give a utility the opportunity to recover prudently incurred costs of providing utility service to its customers, including a return on its used and useful utility property. A utility's rate of return is an important component of a base rate proceeding. Earnings form the numerator in the rate of return equation. Investment in rate base forms the denominator.

The Board's regulation of a utility's rate of return is intended to identify the fair and reasonable cost of capital invested in the utility's rate base and to approve rates that give a soundly managed utility an opportunity to recover those costs. A utility's rate of return should be "reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties." Bluefield Waterworks and Imp't. Co. v. Public Svc. Comm., 262 U.S. 679, 693 (1923). However, in fixing "just and reasonable" rates, the Board must balance the interests of utility investors and ratepayers. Federal Power Commission et al v. Hope Natural Gas Co., 320 U.S. 591, 603 (1944). Furthermore, the rate of return figure must fall "within the range of reasonableness, the zone between the lowest rate not confiscatory and the highest rate fair to the public." In re N.J. Power & Light Co., 9 N.J. 498, 534 (1952).

Here, Rate Counsel is concerned that under its current base rates JCP&L is earning a return in excess of what may be considered within the "zone of reasonableness." Rate Counsel engaged expert consultant Mr. Robert Henkes to examine JCP&L's recent earnings. Using publicly available data found in recent JCP&L's filings with the Federal Energy Regulatory Commission ("FERC"), Mr. Henkes examined the Company's overall earnings and rate base and, in turn, calculated the Company's current earned rate of return and evaluated its reasonableness. A Certification setting forth Mr. Henkes' findings in detail is appended hereto.

Using available data, Mr. Henkes concluded that JCP&L earned a rate of return of 12.37% in 2010 for its total electric operations (distribution, generation, and transmission), which is far in excess of its allowed overall rate of return, 8.50% for its regulated distribution operations which was established in its most recent base rate case.[1] Henkes Cert., Para. 8. Furthermore, Mr. Henkes concluded that JCP&L's current rate of return is excessive, i.e., outside the "zone of reasonableness." Henkes Cert., Para. 5. Although the data upon which Mr. Henkes bases his analysis was subject to certain limitations, as discussed below and in his certification, Mr. Henkes believes that any potential inaccuracies in his analysis attributable to the data limitations will not change the conclusions of his earnings review. Henkes Cert., Para. 7. Notably, Mr. Henkes developed a range of estimates using several different scenarios, updating the Company's authorized rate of return and capital structure. Henkes Cert., Para. 19-25. Mr. Henkes found that JCP&L's potential overearnings for its total electric operations (distribution, generation, and transmission) range from $86 to $90 million which, on a tax-grossed up basis, is equivalent to a revenue requirement excess range of $146 to $152 million. Henkes Cert., Para. 10.

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[1] I/M/O JCP&L, BPU Dkt. No. ER02080506, <u>et al</u> (Order, 5/31/05).

Mr. Henkes acknowledged certain limitations of the available data upon which he based his analysis. Henkes Cert., Para. 7. For his analysis, Mr. Henkes used data gathered from JCP&L's annual FERC Form 1 submission. It is Mr. Henkes' understanding that the FERC Form 1 forms the basis of the Annual Reports submitted to the Board by electric utilities. Henkes Cert., Para. 6, footnote 1. The FERC Form 1 provides only JCP&L's combined distribution, generation and transmission results, whereas the Board's ratemaking jurisdiction is limited to JCP&L's distribution operations and does not extend to its transmission and divested generation operations. Henkes Cert., Para. 7. Hence, Mr. Henkes' rate of return calculations also encompassed generation and transmission operations, which fall outside the scope of the Board-authorized return on its distribution operations. Furthermore, Mr. Henkes' calculation is based on 2010 data, the most recent 12-month period for which JCP&L-specific data is available. Notwithstanding these limitations, Mr. Henkes states that he does not believe that any potential inaccuracies attributable to the data limitations will affect his ultimate conclusion. Henkes Cert., Para. 7.

Although Mr. Henkes' analysis provides evidence that gives reason to believe that JCP&L is earning a return far in excess of its authorized return, a base rate case would address any doubts as to whether JCP&L is overearning, and whether its current rates for service are just and reasonable. A base rate case would provide the Board and JCP&L's customers with an opportunity to examine the Company's earnings in the context of establishing a reasonable rate of return for its investors. Furthermore, a base rate case would also provide an opportunity to examine the Company's earnings in the context of its investment in its rate base, the plant and equipment needed to provide service to its customers.

Over six years have elapsed since the Board set JCP&L's current base rates for electric service. On May 31, 2005, the Board issued an Order establishing JCP&L's current base rates (BPU Dkt. No.ER02080506, et al.). Since that time, notwithstanding the numerous changes affecting the local and national economic environment, JCP&L has not filed a request to change its base rates, thereby depriving its customers of an opportunity to review the Company's revenues, expenses, and other facets of its operations typically reviewed in a base rate case. In contrast, within the past two years, all of the State's other electric public utilities were subject to the scrutiny of a base rate case.[2]

A base rate case would also help ensure that JCP&L makes the necessary capital improvements required to provide safe, adequate and reliable utility service. One way for a utility to increase its rate of return for its investors in the short term is to reduce its investment in the plant and equipment needed to provide its customers with safe, adequate and proper service. By tying the utility's rate of return to its rate base, a base rate case removes the incentive to reduce investment in plant and equipment in order to boost investor returns. This aspect of a base rate case is of particular concern for JCP&L, which had experienced several significant service reliability incidents in the past.[3] Notably, unlike JCP&L, the capital budgets and spending of the State's other three electric utilities were examined in recent infrastructure investment proceedings before the Board.[4]

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[2] See I/M/O Public Service Electric and Gas Company, BPU Dkt. No. GR09050422 (Order, 6/7/10); I/M/O Atlantic City Electric Company, BPU Dkt. No. ER09006664 (Order, 5/12/10); and I/M/O Rockland Electric Company, BPU Dkt. No.ER090080668 (Order, 5/12/10).

[3] See I/M/O the Board's Investigation into JCP&L's Emergency Management of the Seaside Heights/Tom's River July 5-8, 2003 Event, BPU Dkt. No. EO04050373; I/M/O the Board's Investigation into JCP&L's Outages of the July 4, 2003 Weekend, BPU Dkt. No. EX03070503; and I/M/O the Board's Investigation into JCP&L's Storm Related Outages of August 2002, BPU Dkt. No. EX02120950.

[4] See I/M/O Public Service Electric and Gas Company, BPU Dkt. No. E011020088; I/M/O Atlantic City Electric Company, BPU Dkt. No. EO09010054; and I/M/O Rockland Electric Company, BPU Dkt. No.EO09010064. By letter dated July 6, 2010, JCP&L withdrew its infrastructure investment program petition (BPU Dkt. No. EO09010055).

The Board has a broad statutory grant of authority over public utilities:

> The board shall have general supervision and regulation of and jurisdiction and control over all public utilities as defined in this section and their property, property rights, equipment, facilities and franchises so far as may be necessary for the purpose of carrying out the provisions of this Title. N.J.S.A. 48:2-13(a).

More specifically, N.J.S.A. 48:2-21(b) provides that the Board may initiate a base rate proceeding on its own "motion; or after issue is joined through the filing of an answer to a complaint, when such proceeding is initiated by complaint." The plain language found in the above-cited statutes clearly provide the Board with the authority to initiate a base rate case proceeding by issuing an Order directing JCP&L to file a base rate case.

Here, as set forth above and in the Certification of Mr. Henkes, there is reason to believe that JCP&L is earning in excess of its allowed rate of return. Moreover, Rate Counsel is concerned that under its current base rates for service JCP&L is earning an unreasonable rate of return, outside of what may be considered "the zone of reasonableness." Therefore, for the reasons set forth above and in the Certification of Mr. Henkes, the Board should issue an Order directing JCP&L to file a base rate case petition so that the Board may determine whether the Company's current rates are just and reasonable. Furthermore, in order to expedite the proceeding, Rate Counsel asks that the Board require JCP&L to file its petition using a 2010 historical test year. The use of a historical 2010 test year would provide the Board with readily available actual data and the historical 2010 data would not suffer from the uncertainty inherent in a projected test year.

II. Conclusion

Rate Counsel has established that New Jersey ratepayers are entitled to the requested relief. The Board has authority to order the requested relief. Accordingly, Rate Counsel hereby respectfully asks that the Board issue an Order directing JCP&L to file a base rate case petition using a historical 2010 test year so that the Board may expeditiously conduct a proceeding to determine whether the Company's current rates for electric service are just and reasonable.

Respectfully submitted,

Dated: September 7, 2011

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